Supreme Court U.S.
FILED

031345 MAR 17 2004

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In the Supreme Court of the United States of America

RICHARD E. BUCKLEY,

PETITIONER,

v.

LUCILLE G. MEIS, REGIONAL CHIEF COUNSEL, OFFICE OF THE GENERAL COUNSEL, SEATTLE REGION X, SOCIAL SECURITY ADMINISTRATION, ET AL.

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case involves the dismissal of a complaint; a harsh alternative normally imposed in only the most extreme of circumstances in this era of notice pleading, pursuant to a Local Civil Rule concerning the length of a brief, a non-jurisdictional issue. Additionally, as an issue of first impression, this case involves the issue of whether a dismissal of a complaint, whether based improperly on a Local Civil Rule, a skimming of 50 pages of a pleading, or an unsupported determination by a Court of Appeals that a district court dismissed a complaint based on a failure to state a claim, can ever be justified where spoliation is evident and admitted by the opposing party. The questions presented are:

1. Whether the district court, the Honorable Robert S. Lasnik presiding, properly dismissed Mr. Buckley's complaint on the basis of a Local Civil Rule[1] by stating that Mr. Buckley's Brief in Opposition to a Motion for Summary Judgment,[2] at 75 pages in length, exceeded the page limits the same Local Civil Rule that allowed such a pleadings to be 24 pages in length. Judge Lasnik submitted in his Order that "[t]he Court stopped reading Mr. Buckley's submission at page 25, although the remainder of the document was skimmed to ensure basic familiarity with the issues in this case." (App. A). Judge Lasnik then dismissed Mr.

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[1] Local Civil Rule 7(e)(3), United States District Court, Western District of Washington (App.'s A and B).

[2] Mr. Buckley also notes that although he entered a Motion to Strike, in which he challenged particular issues, normally sufficient to raise in the lower court the issue of whether the party opposing summary judgment is entitled to discovery, the district court allowed him no discovery at all. See Program Engineering, Inc. v. Triangle Publications, Inc., 634 F.2d 1188, 1193 (1981) ("Generally where a party has had no previous opportunity to develop evidence and the evidence is crucial to material issues in the case, discovery should be allowed before the trial court rules on a motion for summary judgment.").

Buckley's complaint based on the allegation that Mr. Buckley had "not opposed defendants' motion to dismiss all claims against the individual defendants." (App. A).

2. Whether a district court may properly dismiss a complaint when the defendants have admitted to spoliation of evidence. Regardless of who destroys or conceals the evidence, spoliation interferes with the proper administration of justice by giving one party an unfair advantage over an adversary. In the most egregious instances, as here, spoliation amounts to "a form of cheating which blatantly compromises the ideal of the trial as a search for truth, and expropriates an injured party's legal remedy. Nesson, Incentives to Spoliate Evidence in Civil Litigation: The Need for Vigorous Judicial Action, 13 Cardozo L.Rev 793 (1991). Considering that spoliation creates an imbalance between the litigating parties, and in the instant matter this imbalance has been created by a party in whose favor dismissal has been rendered, the culpable party has only been improperly rewarded for its self-admitted impermissible acts.

PARTIES TO THE PROCEEDING

RICHARD E. BUCKLEY appeared below as Mr. Buckley-appellant and submits this petition for a writ of certiorari in his capacity as petitioner pro se, attorney at law.

The following persons appeared below as defendants'/appellee's and appear herein as respondents: LUCILLE GONZALES MEIS, Regional Chief Counsel, Office of General Counsel, Seattle Region X, Social Security Administration; CHRISTINE R. HENDON, Staff Assistant, Office of the General Counsel, Seattle Region X, Social Security Administration; LISA DESOTO, General Counsel, Office of General Counsel, Social Security Administration; RANDOLPH W. GAINES, Deputy Chief Counsel, Office of the General Counsel, Social Security Administration; JO ANNE B. BARNHART, Commissioner of Social Security; BRIAN KIPNIS, Assistant United States Attorney, Office of the United States Attorney; JOHN ASHCROFT, United States Attorney General, and the SOCIAL SECURITY ADMINISTRATION.

RULE 29.6 STATEMENT

Petitioner. Richard E. Buckley, submits the following statement of his corporate interests and affiliations for the use of the justices of the Court:

1. Mr. Buckley is not a publicly held corporation or other publicly held entity.

2. No publicly held corporation or entity owns 10 percent or more of Mr. Buckley's stock, and in fact, Mr. Buckley currently possess no stock holdings.

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OPINIONS BELOW

The opinion of the district court is unreported (App. A). The opinion of the court of appeals (App. B) is reported at 84 Fed.Appx. 852, 2003 WL 23097985 (9th Cir 2003) (Not selected for publication in the Federal Reporter).

JURISDICTION

The court of appeals' judgment was entered on December 18, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment Due Process Clause, ensuring citizens due process of law, does provide in pertinent part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V.

Fed.R.Civ.P. 8 provides, in pertinent part:

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

* * *

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

STATEMENT

This case raises important questions concerning the issue of dismissing a complaint on the basis of adherence to a Local Civil Rule, a non-jurisdictional criterion, in a notice pleading jurisdiction. There is no question that dismissal of a complaint is a harsh alternative[3] that is employed by the courts in only the most

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[3] Dismissal is a harsh remedy and should only be imposed in "extreme circumstances." Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); cert. denied, 488 U.S. 819, 109 S.Ct 59; 102 L.Ed.2d 137 (1988).

extreme of circumstances. The instant matter also involves the basic issue of essential fairness and whether litigants in the federal judicial system may still expect to receive the same. If parties to litigation, particularly defendants represented by the United States Government, are allowed to destroy evidence in order that they may evade liability, the American public will lose its faith and belief in a just adjudicatory process, and for good reason. Spoliation is an easily accomplished method of creating an unfair imbalance in the search for the truth. It is most often a nearly impossible reprehensible deed to discover, let alone prevent. If the courts are to ignore this repugnant conduct, the result will not be a slippery slope; it will be a dark hole where righteousness and integrity will forever lose even the appearance of illumination.

1. The Federal Rules of Civil Procedure provide that a complaint, or a claim for relief, satisify only the simplest of requirements. Specifically, the Rules provide the basic premise that "[a]ll pleadings shall be so construed as to do substantial justice." Fed.R.Civ.P. 8 (a), (f). Mr. Buckley went far beyond these requirements to satisfy these Rules, and it was patently improper to dismiss his Verified Complaint. He provided ample legal justification and grounds for the jurisdiction of the district court. He demonstrated convincingly that defendants had violated the Privacy Act of 1974, 5 U.S.C. § 552a, but Judge Lasnik acted as a trier of fact and decided an issue of fact concerning a defense Respondents' had unconvincing stated when Mr. Buckley had presented argument to the contrary. Of course, Mr. Buckley requested relief. Beyond these essentials, Judge Lasnik required more than the Federal Rules of Civil Procedure demand, and did so improperly.

2. Courts normally afford great deference to a plaintiff in determining whether his or her complaint will survive a test for failure to state a claim. See No. 84 Employer-Teamster Joint Council Pension Trust Fund v. America, 320 F.3d 920, 931(9th Cir.

2003). All allegations of material fact made in the complaint are taken as true and construed in the light most favorable to the plaintiff. See Burget v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000); In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 983 (9th Cir. 1999). A complaint should not be dismissed unless it appears beyond a doubt that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. See Williamson v. Gen. Dynamics Corp., 208 F.3d 1114, 1149 (9th Cir. 2000). Here, the Ninth Circuit Court of Appeals misconstrues the decision of Judge Lasnik, and attempts to provide separate grounds for his improper dismissal of Mr. Buckley's complaint. It thereby ignores Mr. Buckley's provision of material fact supporting his complaint, and avoids the actual argument concerning the improper basis for Judge Lasniks' dismissal. Judge Lasnik stated, with revealing venomous and gratuitous distain:

> As noted by defendants, Mr. Buckley's acting supervisor and the officials who have to determine whether Mr. Buckley's employment should be terminated have a need to know whether his first-line supervisor made reasonable efforts to assist Mr. Buckley in remedying perceived deficiencies before proving critical performance assessment and/or seeking termination. Mr. Buckley has not identified, and the Court cannot find, any cases which support Mr. Buckley's rather absurd contention that review supervisors must make personnel decisions in the dark, without reference to the employment records maintained by the agency." (App. A).

Judge Lasnik could have found authority, had he not "skimmed" Mr. Buckley's Opposition to Defendants' Motion for Summary

Judgment, for the essential facts that: a) defendants' provided no legal authority for the allegation that a performance document should ever be considered in a disciplinary action, and the allegation itself differed from the allegations found in the Declaration of Ms. Lucille Gonzalez Meis;[4] b) in the procedural context of the Social Security Administration, performance considerations are separate and apart from disciplinary considerations and Mr. Buckley was attempting to demonstrate, while Judge Lasnik "skimmed" over his legal argument, that an Employee Assistance Program (EAP referral) performance document could not be included in a disciplinary (termination) document without violating the Privacy Act of 1974, 5 U.S.C. 552a, c) that an EAP referral is not an employment record but is rather a highly confidential document maintained in a systems of records known as a SF-7B file, and; d) that Mr. Buckley had provided uncontroverted evidence that the Agency itself prohibited dissemination of EAP referrals intra-Agency.[5]

3. There is no question that the Agency did indeed spoliate much evidence critical to Mr. Buckley's ability to prove his claims in the instant matter, and in all litigation he might have in the

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[4] Curiously, although Mr. Buckley did successfully move to strike the Declaration of Lucille Gonzales Meis, an event that would lead a reasonable jurist to believe that additional evidence would be proper and discovery should commence, Judge Lasnik simply ordered the declaration to be stricken and then announced Petitioner's complaint dismissed. (App. A).

[5] Although Ms. Meis improperly and disingenuously attempted to refute the fact that the Office of General Counsel Agency Headquarters had issued an email memorandum that no communications concerning EAP referrals were to be disseminated under any circumstances, Judge Lasnik himself did strike her Declaration in response to Mr. Buckley's Motion to Strike. (App. A). The fact that Ms. Meis, the primary actor and person who violated the Privacy Act of 1974; 5 U.S.C. § 552a, had attempted to submit a altered Declaration in an wholly unethical and unlawful manner would seem to tend to convince an unbiased district court judge to not to dismiss a Mr. Buckley's complaint, but not so here.

future relating to the Agency's misconduct. Ms. Gonzales Meis, Regional Chief Counsel, Office of the General Counsel, Seattle Region X, Social Security Administration, fully admits that she was responsible for spoliation of the many relevant and material records and evidence that Mr. Buckley compiled and retained in his office. There is no question that Ms. Meis prohibited Mr. Buckley from entering his office for any reason after she impermissibly, and without any explanation, placed him on administrative leave on January 28, 2003. Thomas Crawley, Deputy General Counsel Office of the General Counsel, Social Security Administration, in his removal notice dated April 17, 2003, then also prohibited Mr. Buckley from entering his office space when he sustained Ms. Meis' improper removal proposal. Ira Burcham, Executive Officer, Office of the General Counsel, Social Security Administration, also admits that he received Mr. Buckley's messages requesting that Thomas Crawley provide an opportunity for an oral reply, but did nothing to ensure that these vital messages were retained. In this conspiracy to deny Mr. Buckley access to his office and his accumulated documents and evidence essential to the prosecution of his lawful avenues of legal redress, the Agency thereupon intentionally and unlawfully, even if intent were required and it is not, destroyed Mr. Buckley's compiled evidence. This is plain and undeniable spoliation. For this reprehensible act, the Agency should have been sanctioned in the manner that prohibits them to be rewarded for their unlawful conduct. Any reasonable jurist could not have dismissed Mr. Buckley's complaint under these circumstances where Respondents have created such an extreme imbalance that Mr. Buckley is deterred by their actions from proving his case.

4. After Mr. Buckley had filed two Equal Employment Opportunity Commission formal complaints that had been accepted by the Agency, and multiple Merit Systems Protection Board (Whistleblower) appeals, Mr. Buckley had initiated to defend himself, Ms. Meis decided that she would conduct a

Performance Assessment for Mr. Buckley. Mr. Buckley challenged whether Ms. Meis could be impartial but she stated that it would be perfectly reasonable to do so under these extraordinary circumstances. Unbeknownst to Mr. Buckley, Ms. Meis designed to do more than just conduct an improper Performance Assessment with a clear appearance of impropriety. She meant to permanently damage Mr. Buckley's career, and she effectively, and maliciously accomplished her reprehensible goal.[6] On October 31, 2002, Ms Meis did inform Mr. Buckley that she intended to conduct a Performance Assessment for Mr. Buckley, advising Mr. Buckley that Acting Regional Chief Counsel David Mazzi would be in attendance at the discretion of Mr. Buckley. Mr. Buckley did protest that Ms. Meis should not conduct the said Performance Assessment because of the multiple, and lawful, administrative and civil complaints Mr. Buckley did interpose naming Ms. Meis as the Responsible Agency Official, and that her conducting a Performance Assessment would create an appearance of impropriety. Ms. Meis did respond that she was authorized by a document, for which she provided the website to conduct the Performance Assessment, and did withdraw her offer of allowing Mr. Buckley to decide whether to have David Mazzi attend the Performance Assessment or not. Upon examination by Mr. Buckley, the document to which Ms. Meis referred does not authorize her to conduct a Performance Assessment in circumstances where an appearance of impropriety exists, and Ms. Meis did so admit under oath at a later deposition. Mr. Buckley also contacted the superiors of Ms. Meis in this regard, but received no response.

5. On October 31, 2003, Ms. Meis did conduct a Performance Assessment for Mr. Buckley, and on two occasions, much to the embarrassment, humiliation, and extreme distress of Mr. Buckley, stated that she had made a protected and private referral,

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specifically identifying the nature of the referral, and emphasized that she was strongly recommending that Mr. Buckley use the referral. Ms. Meis also memorialized her comments in a summary of the Performance Assessment she composed at the request of Mr. Buckley. David Mazzi, being in attendance at the Performance Appraisal, did witness and in fact made note of Ms. Meis' totally improper and unlawful comments. Mr. Buckley requested that the superiors of Ms. Meis correct this unlawful infringement, causing Mr. Buckley serious adverse effect, but they refused to take any action and in fact refused to respond. Ms. Meis has admitted that she did indeed improperly disclose this highly personal information protected by the Privacy Act of 1974; 5 U.S.C. § 552a, in a statement to an EEO counselor. David Mazzi also was a witness to the unlawful disclosure and has in his possession notes that memorialize the same.

6. On December 20, 2002, Ms. Meis, after reviewing a single brief that she required that Petitioner submitted to her for review in accordance with her unlawful order imposed on October 31, 2002 during Mr. Buckley's performance assessment at which she provide him a "fully satisfactory" rating, informed Petitioner that she intended to place him on a performance assistance plan (PAP). She also stated that she would provide Petitioner with "paperwork." Her method was improper, and not in adherence with the guidelines of the Office of Personnel, Employee Performance Assistance Program (EPAP), publication that delineates the proper approach to Performance Assistance Plans. Ms. Meis had often referred to this document and has stated that she relies on the same for guidance.

7. The EPAP indicates that the first step in resolving any purported performance problems is "for the supervisor/manager and the employee to develop an Assistance Plan." Ms. Meis, after reading the Taylor brief, summarily announced that she intended to place Petitioner on a Performance Assessment Plan (PAP). She did not attempt to consult with Petitioner to develop an Assistance Plan,

as required by the EPAP. Petitioner firmly asserts that he did not evince any performance problems, or had ever evinced any such problems. She was so intent on imposing a PAP on Petitioner, toward the end of eventually imposing Performance Enhancement Plan (PEP), that she was willing to disregard proper procedure and fabricate performance problems. A PEP can result in reassignment, demotion or removal.[7] Petitioner is assured that this was Ms. Meis' eventually design, as she had demonstrated by subsequent improper actions. Ms. Meis never did provide Petitioner with any paperwork and did not discuss any further the PAP that she improperly attempted to impose on December 20, 2002. Ms. Meis' plainly exhibited intentional and willful intent to act recklessly toward Mr. Buckley, determined to do him professional harm.

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[7] Unsettlingly, for a supervisor with authority over a Region within the Social Security Administration, Mr. Meis has abused this authority to apply performance requisites to force Assistant Regional Counsels to leave Seattle OGC in the past in relatively large numbers. At the most, at any given time, there are only a maximum of eighteen (18) attorney located at Seattle OGC. Within her first three years as supervisor, Mr. Meis did place at least five attorneys on Pips, most that wren unsubstantiated. These individuals, who have testified, and provided evidence in depositions, include Richard H. Wetmore, who had over thirty-three years of federal service, served in the capacity of Acting Regional Chief Counsel before the arrival of Ms. Meis, and was forced to retire nearly four years earlier then he wished because Ms. Meis placed him on an unwarranted PAP that would inevitably lead to a PEP and humiliating termination. Another individual was Benjamin Porter, who Ms. Meis aggravated during the holiday season while he was going through a distressing divorce and who eventual transferred to San Francisco OGC. And then there is the extraordinary situation of Dominique Eng Jinhong, who Ms. Meis assaulted physically because Ms. Jinhong attempted to protect herself against the false accusations from Ms. Meis that Ms. Jinhong had falsified documents. Ms. Meis placed Ms. Jinhong on an "informal PAP" which does not exist in tote disciplinary scheme allowed by SSA. Ms. Jinhong eventually was forced to relocate, but had the courage to testify to these events when called upon to do so. SSA retaliated against Ms. Jinhong when she proffered her testimony by unlawfully introducing a confidential document from her SF-7B file.

8. On January 28, 2003, Ms. Meis sent Petitioner an email, stating that she again intended to place him on a PAP and informed him to attend a meeting for imposition of the same at 2:30 p.m. the same day. She told him to prepare to discuss means in which to ameliorate problems with his performance she preemptively identified without previous discussion or identification. On the same day, Petitioner was scheduled for sick leave until 12:00 p.m. as approved by Ms. Meis. When he returned to the office and read Ms. Meis' message, he had not had an opportunity to have lunch. Petitioner was required to prepare to defend himself at such a meeting, where Ms. Meis wanted him to presume he had performance problems when he did not, and she provided him very little time within which to do so. This was a very unreasonable and improper act for a supervisor, and one that displays and intent on harassing and retaliating against an efficient and productive employee for his seeking legal redress and for making protected disclosures. Petitioner responded that he refused to assume that he had any performance problems, and that indeed, Ms. Meis had demonstrated that she herself had serious performance concerns. He also explained that as she had done in the past, she did not respect the fact that Petitioner had been scheduled for sick leave all morning and that he had no time for lunch.

9. In response to Petitioner's refusal to accept Ms. Meis' improperly presumptive allegations of his performance problems, she placed Petitioner on administrative leave on January 28, 2003, without prior notice.

10. Administrative leave indicates an employee will not be assigned duties, and therefore inactive duty status is the appropriate assignment. When Ms. Meis placed Petitioner on administrative leave and active duty status, yet prohibited him from entering the Office of General Counsel office space, she was violating Petitioner's status, and preventing him from gaining access to crucial evidence he needed to defend himself in the very disciplinary action she had initiated against him. Specially, she

denied him access to other employees in order that he gather declaration, she denied him access to reference materials, and she denied him access to computer files and hard copy evidence relevant to her improper actions and Mr. Buckley's prosecution of claims against her and the Agency. Thomas Crawley compounded the action by prohibiting Petitioner access as well upon his removal notice. These same supervisor's and managers then destroyed the large amounts of accumulated evidence Mr. Buckley had stored in his office, knowing full well that they had denied him access to the same.

11. Further, there is strong indication in the statute that permits placement of employees on administrative leave in "rare" circumstances during the notice period that what is envisioned is administrative leave in a non-duty status, which is much more sensibly logical. This fact leads to the probability that the Agency was attempting to deny Mr. Buckley access to his evidence, and did thereafter intentionally spoliate the same without legal authority. First, in 5 C.F.R. § 752.404(d)(1) the statute states "[w]hen the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action." (emphasis added). Second, the statute implores, in 5 C.F.R § 752.404(b)(3)(iv), that the Agency should consider, again in "rare" circumstances, "[p]lacing the employee in a paid, nonduty status for such time as is necessary to effect the action." (emphasis added). As mentioned earlier, if Petitioner was on active duty status, then he could not be legally prevented from entering his office space. Ms. Meis did indeed prevent him from doing so, and therefore she illegally imposed and infringed on his status in active duty. Actually, what has occurred here is that Ms. Meis created her own status, much as she has created her own Charges out of insupportable accusations. She placed Petitioner on a status that was illegal and by doing so, deprived him of the ability to defend himself appropriately, and she had done so intentionally. Thomas

Crawley compounded the error by denying Petitioner entry to his office to simply recover his personal belongings, including Mr. Buckley's own personally purchased reference materials, and his private email relevant to this matter. Petitioner has been severely prejudiced in his ability to present a comprehensive defense of the spurious allegations made against him by the Agency. Pointedly, Mr. Meis has since testified, contradictorily, that she is aware of the contents of the relevant statute, that she does not know whether the statute provides for active duty status and administrative leave simultaneously, that her removal notice did not contain the direction that Mr. Buckley would be on active duty status as well as administrative leave, and that her proposal notice contained a typographical error stating Mr. Buckley would be on active duty and administrative leave.

12. The Agency failed to provide Petitioner any rationale concerning why it was it was placing him on administrative leave. He was without the ability to defend against the change in his status because he was not provided cause for the action, and therefore he was denied basic due process. That is, he was not informed of the reason he was being removed from his office position and denied access to his office, and the entire Social Security Administration's facilities. Unequivocally, 5 U.S.C. 7513(b)(1) requires that a proposal notice state the specific reasons for the proposed action. See, e.g., Henschied v. U.S. Postal Service, 14 MSPR 422, 426 (1983).[8] Part of Ms. Meis' action was

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[8] "In Cuellar v. U.S. Postal Service, 8 MSPB 282, 8 MSPR 624 (1981), the Board held that "emergency" suspensions, i.e., those constituting adverse actions which are imposed without the statutory 30-day notice period, are improper unless the statutory crime exception is invoked. See 5 U.S.C. § 7513(b). Here, the agency did not specifically invoke the crime exception in suspending Petitioner during the 30-day notice period for his removal, nor did it make mention of the fact that misappropriation of mail was a crime for which a sentence of imprisonment may be imposed. We find, therefore, that the emergency suspension was taken without adherence to the procedural requirements of 5 U.S.C. § 7513, which constitutes harmful error under 5 U.S.C.

the placement of Petitioner on administrative leave, and neither she nor Thomas Crawley provided Petitioner with any explanation of such an inexcusable infringement upon Petitioner's rights as a public servant. In fact, Ms. Meis summarily announced, after her aborted attempt to place Petitioner (for the second failed time) on a Performance Assessment Plan, that she was placing Petitioner on administrative leave. Petitioner asked if there was a reason for such an action and Ms. Meis responded that it would be in her proposal letter to him. She then, in her penchant for her continuing deplorable disrespect for human dignity, provided Petitioner less than five minutes to gather his personal belonging (although Petitioner had to repeatedly request even this small allowance of time) and then forced him to leave through a rear exit door. Petitioner received his proposal letter on February 4, 2003, and it did not contain any explanation for the cause for placing him on administrative leave. Although Ms. Meis plainly lacks the civility and basic decency to recognize the need to always respect human dignity, she is an attorney. As an attorney, she is required to respect the Rule of Law, which includes due process. Petitioner respectfully requests that it was incumbent upon the district court to ensure that Ms. Meis did not forget her duty of fealty to, and her oath to uphold, the United States Constitution. If Ms. Meis is willing to behave illegally in this manner, she most certainly would be willing to behave illegally in a matter concerning the Privacy Act or the spoliation of evidence.

13. Plaintiff received a proposal for his removal from the federal service on February 4, 2003, from Ms. Meis. Aside from the fact that such proposal was quite obviously in retaliation for Plaintiff's seeking lawful legal redress, including the well-

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§ 7701(c)(2)(A). See Grace v. Department of the Air Force, 11 MSPB 293, 13 MSPR 9 (1982); Romero v. Department of the Army, 9 MSPB 330, 10 MSPR 56 (1982)." Id.

grounded complaint in this action, the charges and specifications were all contrived and without proof. Most importantly, within the accompanying documents was contained the highly confidential Employee Assistance Plan[9] referral that was the subject of Mr. Buckley's cause of action before the district court. There can be no possibility of a "need to know" exception under 5 U.S.C. § 552a(b)(1) considering that nowhere in the proposal does Ms. Meis reference the referral. Additionally, the referral is wholly unrelated to the proposed disciplinary action as the referral is not related to disciplinary any manner whatsoever, but is a performance issue document. The document itself, bearing the signature of Ms. Meis states plainly that it is not a disciplinary document and will not be considered in such a fashion. The EAP referral was sent to Thomas W. Crawley and to HRMBT,[10] and therefore constitutes two additional violations of the Privacy Act of 1974, 5 U.S.C. § 552a.

14. Ms. Meis indicates that she inventoried and shipped Petitioner's personal property to him on April 22, 2003, but it was not until repeated requests that Ms. Meis finally shipped Petitioner's Tiffany Lamp to him on June 18, 2003. This fact and self admission evidences her resentment toward Petitioner and her malicious motive for unlawfully violating the Privacy Act of 1974, 5 U.S.C. § 552a, as well as direct evidence that she did indeed

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[9] That Ms. Meis made this EAP referral in retaliation to Mr. Buckley's multiple Equal Employment Opportunity formal complaints, five of which have been accepted by the Agnes, is beyond doubt. In actuality, whether or not she did make this EAP referral in retaliation is inconsequential to its disclosure as a Privacy Act violation, but the pretext for her naming the referral with which to begin does provide support for the fact that she would improperly disclose the same without hesitation, and with violation of any and all laws regardless of his deleterious impact upon Mr. Buckley.

[10] The document was also included in Mr. Buckley's SF-7B file, and as that a management analyst, by the name of Rebecca Halverson, maintains the file, it is highly possible that she did see the EAP referral as well. This would constitute an additional violation of the Privacy Act.

actively spoliate evidence Mr. Buckley had secured in his office. But most critically, apart from demonstrating the malicious, motive for initiating the adverse action against Petitioner, Ms. Meis insists that personal property possessed by Petitioner, research materials, were not returned to him as they have been provided to other attorneys in the Office of General Counsel, Seattle Region X. She fully admits that she frequently entered Petitioner's office and removed materials, and bases this lack of basic decency on the premise that since the materials in question were federal property, when in actuality they were not. Aside from the obvious unlawful conversion, she provides precisely the circumstance Petitioner needs to demonstrate in his allegation of intentional and unlawful spoliation. Ms. Meis fully admits that none of the great amount of evidence that Petitioner compiled over the five and one half years was inventoried, and she did so with full knowledge that she was destroying vital evidence.

15. Ms. Meis provides additional evidence that she did indeed act to spoliate evidence. She answered in the a request for admission that she was aware that Petitioner was prosecuting a civil action with the Ninth Circuit Court of Appeal, in which he asserted that Ms. Meis repeatedly violated Petitioner's reasonable expectation of privacy. She also admitted that she had received a summons and complaint in the same action. Additionally, Petitioner immediately applied for unemployment compensation upon his improper removal, on April 19, 2003, and the Agency is charged with this knowledge. In any event, Ms. Meis did not inventory his office contents until April 22, 2003, and this is well after she would know that Petitioner was seeking unemployment compensation and would need to have access to the evidence contained in his office. Nonetheless, she destroyed the same evidence. The response of Ms. Meis, under oath, to the request for admission is as follows:

24.It is true that much of the paperwork and other materials so destroyed as in request for admissions 24 have been destroyed without any record being retained of their existence.

_____ Admit _____ Deny

RESPONSE: The Agency objects to this request as irrelevant and not likely to lead to admissible information. Without waiving these objections, Ms. Meis admits that she did not inventory those items, other than Petitioner's personal belongings, reference in response for admission.

No. 24. Ms. Meis incorporates by reference her response to request for admission No, 24 in response to the remainder of this request. (emphasis added).

Thereby, Ms. Meis fully admits that she was responsible for spoliation of the many relevant and material records and evidence that Petitioner compiled and retained in his office. Mr. Buckley did properly plead, and continues to do so, that facts showing Respondents' have destroyed or concealed documents or physical evidence needed in prospective or pending litigation. See Parrino v. FHP, 146 F.3d 699, 706 (9th Cir. 1998).

16. Mr. Buckley initiated an action in the United States District Court, Western District of Washington, delineating among his causes of action, inter alia, violations of the Privacy Act of 1974; 5 U.S.C. § 552a, and the unlawful spoliation of evidence by defendants. Mr. Buckley provided a great deal of evidence for

both claims. The district court determined that, sua sponte,[11] since Mr. Buckley's briefs in opposition to motions for summary judgment where in excess of 24 pages, a limitation provided by Local Civil Rule 7(e)(3), "[t]he Court stopped reading at plaintiff's submission at age 25, although the remainder of the document was skimmed to ensure a basic familiarity with the issues in this case." (emphasis added). Unquestionably, Judge Lasnik applied the page limitations of a Local Civil Rule to Mr. Buckley's detriment, and did dismiss on the same basis. If Judge Lasnik refused to read the remaining two thirds of Mr. Buckley's pleading, there is no possible method in which Mr. Buckley could receive a full and fair

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[11] Repeated here, Mr. Buckley offered to the district court: "[S]ince Ms. Mittet filed a combination of documents, Plaintiff responded with the permissible number of pages. In response to a motion for summary judgment, Plaintiff is permitted twenty-four pages (CR 7(e)(3)); in response to a motion to dismiss, twenty-four pages (CR 7(e)(3)); in a motion for sanctions, twelve pages (CR 7(d)(3)). Defendants' also referred to their opposition to Plaintiffs' application for a preliminary judgment in both of their initial motions, and therefore Plaintiff was allowed an additional twelve days. See CR 7(d)(3). This total allowance exceeds the seventy-five pages Plaintiff submitted in his PLAINTIFF'S REPLY BRIEF TO DEFENDANTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR SANCTIONS. Further, Ms. Mittet refers to "CR 7(c)" as authority for her suggestion that Plaintiff needed to file a request to file an overlength brief. That particular section contains the single word "Reserved." Plaintiff will not attempt to explain Ms. Mittet's arguments in this regard, and only submits that her contentions must be stricken as irrelevant. LeDuc, 814 F.Supp. at 830. (LeDuc v. Kentucky Cent. Life Ins. Co., 814 F.Supp. 820, 830 (N.D. Cal. Aug. 31, 1992). They are also impertinent. Fantasy, Inc., supra, at 1527. (Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)." Not the district court nor the court of appeals addressed this highly plausible argument. Further, considering Respondents had not entered a motion to strike concerning Local Civil Rule 7(e)(3), Judge Lasnik dismissed Mr. Buckley's complaint on the basis of an issue that did not appear in the pleadings, and failed to provide Mr. Buckley advance notice that he intended to dismiss on this basis, or provide Mr. Buckley an opportunity to cure any such perceived defect.

disposition of his opposition to summary judgment or motion to dismiss.

17. The Ninth Circuit Court of Appeals affirmed. (App. A).

a. In a conclusory statement, the court of appeals alleged:

> Contrary to Mr. Buckley's contention, the district court dismissed his action for failure to state a claim, not because he violated Local Civil Rule 7(e)(3)'s page limitation.

(App. A). Nowhere in his Order does Judge Lasnik mention the words "failure to state a claim." The court of appeals has created such a ruling where it plainly does not exist in the district court Order.

b. The court of appeals ignores the fact that the Office of General Counsel, Headquarters, did announce in an email Mr. Buckley provided to the district court that all communications regarding EAP referrals could not be disseminated intra-Agency.[12] The email states: "Following up on our discussion last Tuesday, **all communications with the EAP are confidential absent written permission to disclose from the affected employee** or the existence of a judicial proceeding requiring disclosure . . . Email from HQ OGC General Law to HQ OGC Regional Chief Counsels, dated July 1, 2002. (emphasis added). The email does not limit its scope to "employee's discussions with an EAP counselor and the confidentiality of those discussions," as Lucille G. Meis would prefer it did. It plainly states "all communications." Further, the use of the term "affected employee" strongly suggests an action being done to an employee rather than one being done by an employee. Most convincing, in the EAP referral itself, Lucille G. Meis states "I am making this

referral at the advice of a consultant with the Employee Assistance Program." She thereby identifies a communication with the EAP. She is clearly prohibited from disclosing the same communication by the terms of the above email. By disclosing the EAP referral, and worse yet, by providing an actual copy of the referral to Thomas W. Crawley[13] and HRMBT[14], she has impermissibly revealed the EAP communication. By the Agency's own limitations, she has violated the Privacy Act of 1974, 5 U.S.C. § 552a. Ms. Meis does not controvert that she did disclose the EAP referral that is the initial matter that caused Plaintiff to file his complaint. Ms. Meis has testified that she understands that a SF-7B file, the file in which the document was contained, is a file maintained in a systems of records, and that she could not divulge any information contained within a systems of records without the written consent of the affected employee or at the written request of the employee. Ms. Meis' Declaration and her statements to an Equal Employment Opportunity Counselor demonstrate beyond doubt that she disclosed the EAP referral willfully and knowingly. During the brief period between the time when Plaintiff filed his complaint in this action, on January 3, 2003, and the date when Ms. Meis retaliated against him for his doing so, February 4, 2003, Ms. Meis managed to commit at least two additional violations of the Privacy Act of 1974; 5 U.S.C. § 552a. These violations were even more flagrant than those Plaintiff initially described in his Verified Complaint as Ms. Meis actually has the audacity to send the entire EAP referral document to Thomas W. Crawley and to HRMBT along with a retaliatory disciplinary action. The EAP referral itself states it is unrelated to discipline and Ms. Meis did

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[13] Deputy General Counsel, Office of the General Counsel, Social Security Administration

[14] HRMBT, Social Security Administration, Suite 2900, M/S 292C, 701 Fifth Avenue, Seattle, 98104-7075. Listed on Lucille Meis' proposal letter.

not refer to the EAP referral anywhere in her retaliatory disciplinary proposal.

c. A genuine issue of fact remains concerning Ms. Meis' additional violations of the Privacy Act of 1974; 5 U.S.C § 552a; violations identified by Ms. Mittet in her motion. Ms. Meis did send copies of the EAP referral to Mr. Crawley and HRMBT, but failed to address this fact in her Declaration. Consequently, the entire consideration of these additional violations remain unsupported by any evidence made available in Defendants' Motion for Summary Judgment.

REASONS FOR GRANTING THE PETITION

Review by this Court is warranted to reconcile (1) the decision by this Court in Boag v. McDougall,[15] that even where a pro se petitioner's pleading is inartful, federal courts have long established that such pleadings will be construed liberally in order that they be found to state a cause of action, with the district court's Order to punitively impose a Local Civil Rule that effectively removed two thirds of Petitioner's defensive motion from consideration, and the court of appeals unsupported rhetoric that the district court dismissed on a basis nowhere to be found in the district court's Order; (2) the issue of whether a district court can ever properly dismiss a complaint, and a court of appeals affirm the same, when the defendants openly admit to spoliation.

The initial issue implicitly involves more than the singular problem of reconciliation of a decision rendered by this Court with that of a court of appeals and a district court. It as well involves the very primal issue of federal jurisdiction, practice, and procedure that reflect upon this Court's prime responsibility for the proper functioning for of the federal judiciary. See Bruner v. United States, 343 U.S. 112, (1952) (federal jurisdiction). In Justice Stevens'

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[15] 454 U.S. 354, 365, 102 S.Ct 700, 701, 70 L.Ed.2d 551 (1982)

words: "As the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure error-correcting function in federal litigation."[16] The issues of whether the district court did in fact dismiss on the basis of a Local Civil Rule, whether to do so was in its jurisdictional authority, and why the court of appeals found otherwise, presents questions of importance, novelty and difficulty because little is actually stated in any of the previous decisions that would provide a concrete understanding of precisely what has transpired. As this Court stated in Boag when faced with similar circumstances: "If a dismissal is to be based on the ground that petitioner failed to comply with the local rule, or that his prior filings justify the conclusion that his action is frivolous or malicious, a brief statement explaining that ground should be made by the District Court to facilitate intelligent appellate review." Boag, 454 U.S. at 365,n*. The district court fails to use the words "frivolous" or "failure to state a claim," and the court of appeals conjures the words "the district court dismissed [Mr. Buckley's] action for failure to state a claim . . ." (App. B). Neither of these statements provide any lucid guidance concerning the actual grounds upon which Mr. Buckley's complaint was dismissed. Equally distressing, they are contradictory.

As an initial consideration, the Ninth Circuit Court of Appeals has determined held that "for purposes of the statute of limitations the district court should regard as 'filed' a complaint which arrives in the custody of the clerk within the statutory period but fails to conform with formal requirements in local rules." Loya v. Desert Sands Unified School Dist., 721 F.2d 279, 281 (9th Cir. 1983). The basis for this holding is that local rules should not be construed as affecting the jurisdiction of the district court, but instead should merely regulate the practice within the court. Id. at 280. In Loya the plaintiff's complaint was timely filed, but was not

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[16] Florida v. Rodiguez, 469 U.S. 1, 7 (1984) (Stevens, J., dissenting).

accepted by the clerk of the court because it was printed on 8 1/2 " x 13" paper instead of 8 1/2 " x 11" paper as required under a local rule. By the time the plaintiff was notified that the complaint would not be accepted until submitted on paper that complied with the size specified by the local rules, the applicable statute of limitations had run. The district court then dismissed the action. Consequently, the action was effectively time-barred by virtue of a local rule.

On appeal, plaintiff's claim was reinstated. It was held that plaintiff had filed his complaint before the statute of limitations had run. The clerk's refusal to accept the complaint because of a local rule gave that rule a jurisdictional function that was not authorized under Fed.R.Civ.P. 83 and in conflict with Fed.R.Civ.P. 1, Id. at 281. Consequently, the court of appeals remanded the action for trial. See also Cintron v. Union Pac. R. Co., 813 F.2d 917, 920 (9th Cir. 1987) (failure to punch holes in top margin of the complaint or to include a copy of the civil cover sheet should not prevent prosecution of an action); United v. Doe Rim Fishery Co., 794 F.2d 1392 (9th Cir. 1986) (naming agents of defendants instead of defendants themselves in summons as required by local rule should not bar action); cf. Torres v. Oakland Scavenger Co., 487 U.S. 312, 320-21, 108 S. Ct 2405, 2410-11, 101 L.Ed. 2.d 285 (1988) (naming of a party in the notice of appeal as required under Fed.R.App.P. 3(c) is jurisdictional).

Further, the Ninth Circuit Court of Appeals stated conclusively in Couveau v. American Airlines, Inc., 218 F.3d 1078, 1081-82 (2000) that "we have repeatedly held that a motion for summary judgment cannot be granted simply because the non-moving party violated a local rule." See Marshall v. Gates, 44 F.3d 722, 725 (9th Cir. 1995); Henry v. Gill Indus., Inc., 983 F.2d 943, 950 (9th Cir. 1993). Judge Lasnik was without authority to dismiss Mr. Buckley's Verified Complaint on the alleged basis that Mr. Buckley violated a Local Rule. It is not reasonable that Judge Lasnik could not have possibly aware of such a long established

rule of law. The only conclusion to be drawn from Judge Lasnik's highly impermissible conduct in this regard is an attempt to force upon a pro se Plaintiff a disingenuous requirement that most pro se Plaintiff's would be unable to counter in an argument.

The Ninth Circuit Court of Appeals has also had occasion to consider the impact of a district court's decision to grant a motion to strike and "on the basis of Western District of Washington Local Civil Rule 7, which limits the length of summary judgment briefs to twenty-four pages, limits the length of briefs relating to other motions to eight pages, and makes no allowance for surrebuttal briefs." King County v. Rasmussen, 299 F.3d 1077, 1082 (9th Cir. 2002), cert. denied 123 S.Ct. 2220, 155 L.Ed.2d 1106. The critical statement by the court was as follows:

> For the most part, however, the fact that this material has been struck will not affect our review. The final pages of the summary judgment response brief do not contain separate legal arguments that are waived because they were not raised in the first twenty-four pages of the brief. Instead, they contain
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> comparisons between the facts of this case and the facts of a Washington Court of Appeals case dealing with a railroad right of way. We must consider the effect of any case relevant to the arguments raised, regardless of whether the Rasmussens briefed the particular case.

Id. (emphasis added). And this is the essential difference between what this Court quite plainly has upheld, and what the court of appeals misapprehends. The district court's "brief review of the last 50 pages of plaintiff's memorandum" could not possibly afford Mr. Buckley the substantive due process that is his guarantee. Judge Lasnik decided, after reading only the first 25 pages of Mr.

Buckley's brief, that Mr. Buckley had "not opposed defendants' motion to dismiss." because Judge Lasnik prohibitively determined that the remaining 50 pages, that he refused to read other than to skim, did "contain separate legal arguments that are waived because they were not raised in the first twenty-four pages of the brief." Id. Candidly, Judge Lasnik was so determined to find a method with which to dismiss Mr. Buckley's complaint that he seized upon an improper basis, a Local Civil Rule, and thereupon the court of appeals was obligated to attempt to avoid the imposition of such an erroneous decision. The court of appeals attempted to state, where Judge Lasnik did not, that the district court dismissed on basis that does not appear in Judge Lasnik's Order at all.

Turning to the other rationale for why dismissal could never be proper in the instant matter, Petitioner respectfully offers that spoliation is defined as the destruction, significant alteration or non-preservation of evidence that is relevant to pending or future litigation. Barsoum n. NYC Housing Auth., 202 F.R.D. 396, 399 (2001); Trigon Ins. Co. v. United States, 204 F.R.D. 277 (2001). Regardless of who destroys or conceals the evidence, spoliation interferes with the proper administration of justice by giving one party an unfair advantage over an adversary. In the most egregious instances, as here, spoliation amounts to "a form of cheating which blatantly compromises the ideal of the trial as a search for truth, and expropriates an injured party's legal remedy. As aforementioned, spoliation creates a serious imbalance between the litigating parties. To remedy this imbalance, a court may impose restrictions against the wrongdoer, but Mr. Buckley doubts that the courts ever intended for such litigants to benefit from this reprehensible conduct as they have in this case.

As a general rule, a person must preserve all documents discoverable in litigation that is pending or of which it has notice. See Fujitsi, Ltd. V. Federal Express Corp, 247 F.3d 423, 436 (2d Cir), cert. denied, 543 U.S. 891, 122 S.Ct. 206, 151 L.Ed.2d, 146

(2001). Even in the absence of actual notice, a person must preserve documents that it knows or should know will be discoverable in "reasonably foreseeable" litigation; "reasonably foreseeability" is determined on a fact specific basis. If litigation is in fact pending or reasonably foreseeable, the legal standard for the retention of documents is their discoverability in the litigation. Id. There can be no doubt that Ms. Meis had actual notice that Petitioner intended to appeal his removal action, and failing this, that his appeal was "reasonably foreseeable," in this appeal. Further, Petitioner actually did have litigation pending in the Ninth Circuit Court of Appeals, and Ms. Meis admits that she was served with a summons and complains in that action. The spoliation committed by Ms. Meis was intentional considering that she and Thomas Crawley acted to prevent Petitioner from gaining any access to his office once Ms. Meis placed him on administrative leave effective January 28, 2003.

Spoliation is not conduct to be taken lightly, and the Ninth Circuit Court of Appeals has itself suggested it is sufficient grounds to justify a new trial, an extraordinary remedy indeed. Glover v. BIC Corp., 6 F.3d 1318, 1329 (1993). The Glover court, already remanding the case for a new trail on other grounds and mentioning that spoliation would have been an equal consideration in this vein, found dissatisfaction with the trial court's dismissive attitude toward spoliation. Id. In a most direct instruction, the court of appeals stated, "[o]n remand, we are confident that the trial court with the assistance of the parties will be able to rewrite [its] instruction to make it clear that bad faith is only one avenue to the presumption, but not the only one." Id. at 1330. The court of appeals also reminded the trial court that a finding of bad faith is not a prerequisite to corrective procedure. Stating that a finding of bad faith will suffice, the court of appeals also delineated that so would a simple notice of "potential relevance to the litigation." Id. citing Akiona v. United States, 938 F.2d 158, 161 (9th Cir. 1991); Unigard v. Lakewood, 982 F.2d 363, 368-70,n.2 (9th Cir. 1992).

The Ninth Circuit Court of Appeals thereby has unequivocally stated its opinion that spoliation cannot simply go unnoticed, unreddresed and plausibly result in a dismissal against the injured party. Dismissal of complaints, particularly those submitted by pro se Petitioners who look to and depend upon to the courts for some assurance of justice, are of substantial practical; importance relevant to frequently recurring procedural questions such a the sufficiency of pleadings. Petition pro se respectfully submits that it is not the United States Government that should benefit from liberal construction, compelling a district court to dismiss a complaint on grounds not the Government did not allege. Rather, if a basic of sense of fair play and equal justice does remain in the civil arena, a plaintiff's arguments should receive at least the obvious consideration they require, and a defendant's conduct to create an imbalance should not go ignored.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 2004

APPENDICES

APPENDIX A

Apr 29 2003
At Seattle
Clerk U.S. District Court
Western District of Washington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD E. BUCKLEY, Plaintiff,	) Case No. C03-0007L) ORDER GRANTING) DEFENDATS' MOTION) TO DISMISS AND
LUCILLE G. MEIS, et al, Defendants.	) DENYING PLAINTIFF'S) MOTION FOR) SANCTIONS

This matter comes before the Court on "Defendants' Motion to Dismiss and/or for Summary Judgment" In the context of a motion to Dismiss, the Court must accept the allegations in the complaint as true and construe them in the light most favorable to plaintiff. See, e.g., In re Syntex Corp. Sec. Litig., 95 F.3d 922, 925-26 (9th Cir 1996). All reasonable inferences must be drawn in

favor of plaintiff. See, e.g., LSO, Ltd. v. Stroh, 205 F 3d 1146, 1150 n.2 (9th Cir. 200). Only those claims for which it appears beyond doubt that plaintiff can prove no set of facts which would entitle him to relief should be dismissed. See, e.g., Wyler Summit Partnership v. Turner Broadcasting Sys., Inc., 135 F.3d 658, 661 (9th Cir 1998) "Conclusory allegations of law and unwarranted inferences" will not defeat a motion under Fed.R.Civ.P. 12(b)(6). In re VeriFone Sec. Litig., 11 F.3d 865, 868 (9th Cir. 1993).

As discussed in the Court's "Order Denying Motion for Preliminary Injunction," the declarations of Lucille G. Meis, which were offered in support of "Defendants' Motion to Dismiss and/or for Summary Judgment," have been stricken. Contrary to plaintiff's assertions, there is no indication that the declarations were submitted in bad faith. Plaintiff's request for an award of reasonable expenses under Fed.R.Civ.P. 56(g) is, therefore, DENIED.

Pursuant to Local Civil Rule 7(e)(3), briefs in opposition to motions for summary judgment are not to exceed 24 pages in length. Plaintiff's opposition is 75 pages. The court stopped reading plaintiff's submission at page 25, although the remainder of the document was skimmed to ensure a basic familiarity with the issues in the case.[17]

Plaintiff has not opposed defendants' motion to dismiss all claims against the individual defendants. The claims against defendants Lucille G. Meis, Jo Anne B Barnhart, and Brain Kipnis are, therefore, DISMISSED.

The Court need not decide whether the disclosure of information or events of which the speaker has independent knowledge violates the Privacy Act, 5 U.S.C. § 552a. Assuming

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[1] The Court's brief review of the last 50 pages of plaintiff's memorandum shows that plaintiff has used the extra pages to repeat assertions and arguments made in the motion for preliminary injunction, to present irrelevant facts regarding workplace disagreements and a diatribe regarding defendants' references to Judge Zilly's case, and to make unpersuasive arguments regarding defendants' "need to know" defense.

all the facts are as plaintiff has alleged and that Ms. Meis' reference to an earlier offer of assistance constitutes a disclosure of a "record which is contained in a system of records," plaintiff is not entitled to relief under the Privacy Act. The disclosures at issue here were made to "officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties . . ." 5 U.S.C. § 552a(b)(1). As noted by defendants, plaintiff's acting supervisor and the officials who have to determine whether plaintiff's employment should be terminated have a need to know whether his first-line supervisor made reasonable efforts to assist plaintiff in remedying perceived deficiencies before providing a critical performance assessment and/or seeking termination. Plaintiff has not identified, and the Court cannot find, any cases which support plaintiff's rather absurd contention that review supervisors must make personnel decisions

in the dark, without reference to the employment records maintained by the agency.

Because the allegations of plaintiff's complaint cannot support a cause of action under the Privacy Act, the Court need not determine whether plaintiff would have been entitled to a trail by jury and/or the nature of recoverable damages.

For all the foregoing reasons, defendants' motion to dismiss is GRANTED and plaintiff's motion for sanctions is DENIED.

DATED this 29th day of April, 2003.

/s/
Robert S. Lasnik
United States District Judge

App. B1

APPENDIX B

FILED

DEC 18 2003

CATHY A. CATTERSON, CLERK
U.S COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD E. BUCKLEY,	No. 03-35530
Plaintiff – Appellant,	D.C. No. CV-03-0007-RSL
v.	MEMORANDUM**[18]

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted December 8, 2003. [FN*]

FN* This panel unanimously finds this case suitable for decision without oral argument. See Fed,R.App.P. 34(a)(2).

Decided Dec. 18, 2003.

Lucille G. MEIS, Regional Chief Counsel, Office of the General Counsel, Seattle, Region X, Social Security Administration, et al.,

Defendants – Appellees

Appeal from the United States District Court for the Western District of Washington, Robert S. Lasnik, District Judge, Presiding, D.C. No. CV.03-0007-RSL.

Richard E. Buckley, Seattle, WA, Plaintiff-Appellant.

Marion J, Mittet, Esq., Seattle, WA, for Defendnats-Appellees

Before GOODWIN, WALLACE, AND TROTT, Circuit Judges.

**1 Richard E. Buckley appeals pro se the district court's judgment dismissing his action alleging that the defendants violated the Privacy Act by disclosing his supervisor's suggestion that he seek assistance from the Employee Assistance Program. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim. Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826, 830 (9th Cir. 1999). We affirm.

The district court properly concluded that the challenged intra-agency disclosures were permissible under 5 U.S.C. § 552a(b)(1). See Daly-Murphy v. Winston, 837 F.2d 348, 354-55 (9th Cir. 1988)

Furthermore, Buckley's Privacy Act claims against the individual defendants fail because the "privacy right of civil action created by the Act is specifically limited to actions against agencies of the United States Government." Sutton, 192 F.3d at 844 (citation omitted).

Contrary to Buckley's contention, the district court dismissed his action for failure to state a claim, not because he violated Local Civil Rule 7(e)(3)'s page limitation.

Buckley's remaining contentions also lack merit.

AFFIRMED.